

**UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

IN RE:	§	
	§	Misc. No. CC-08-71
SCOTIA DEVELOPMENT, LLC	§	Misc. No. CC-08-72
	§	

ORDER DISMISSING MOTIONS FOR LEAVE TO APPEAL

CSG Investments, Inc. and Scotia Redwood Foundation, Inc. seek leave to appeal the following two orders entered by the Bankruptcy Court: (1) Order on Emergency Motion to Enforce Confirmation Order and Other Miscellaneous Relief [D.E. 3452], and (2) Stipulated Order [D.E. 3464]. *See* Cause No. 2:08-mc-71. The Bank of New York Mellon Trust Company, N.A., as Indenture Trustee for the Timber Notes (“Indenture Trustee”), also seeks leave to appeal the same two orders in Cause No. 2:08-mc-72.

On July 8, 2008, the Bankruptcy Court entered an order confirming the MRC/Marathon Plan of Reorganization (“Confirmation Order”). On July 24, 2008, the Fifth Circuit Court of Appeals agreed to hear a direct appeal of the Confirmation Order but refused to stay the order pending appeal. The Bankruptcy Court subsequently entered two orders addressing the effective date of the Plan and related implementation procedures. The same day the Indenture Trustee¹ filed an Emergency Motion for Reconsideration of Stay with the Fifth Circuit, arguing the MRC/Marathon Plan could not take effect until all appeals were


¹ CSG Investments, Inc. and Scotia Redwood Foundation, Inc. joined in the emergency motion.

concluded and that the Bankruptcy Court lacked jurisdiction to rule otherwise. On July 29, 2008, the Fifth Circuit denied the motion for reconsideration without written order.

Both motions for leave ask this Court to review the Bankruptcy Court's interpretation of certain language contained in the MRC/Marathon Plan of Reorganization. Because the Fifth Circuit Court of Appeals has accepted appellate jurisdiction to review the Bankruptcy Court's order confirming that plan, this Court declines to exercise its jurisdiction over the motions for leave. The motions for leave to appeal are DISMISSED (*In Re: Scotia Development LLC*, Cause No. 8-mc-71, D.E. 1; *In Re: Scotia Development LLC*, Cause No. 8-mc-72, D.E. 1).

Even if this Court were to consider the motions for leave on their merits, the arguments presented therein are the same arguments that were presented to the Fifth Circuit Court of Appeals in the Emergency Motion for Reconsideration of Stay. Because the Fifth Circuit has already considered these arguments and denied relief thereon and for the reasons advanced by Mendocino Redwood Company, LLC and Marathon Structured Finance Fund LP in their objections, the parties' motions for leave should be denied.

ORDERED this 17 day of Oct, 2008.


HAYDEN HEAD
CHIEF JUDGE